

**Award No. 2892**

**Docket No. 2288**

**2-L&N-MA-'58**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 91,  
RAILWAY EMPLOYEES' DEPARTMENT, AFL (Machinists)**

**LOUISVILLE AND NASHVILLE RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:**

That under the controlling agreements Mr. J. O. Harvey was unjustly deprived of seniority and service rights as a Machinist, since August 15, 1955.

That accordingly the Carrier be ordered to grant those rights to Machinist J. O. Harvey beginning August 15, 1955 and compensate him for all time he has been out of service since, August 15, 1955.

**EMPLOYEES' STATEMENT OF FACTS:** Mr. Harvey was employed as an apprentice at the carrier's South Louisville Shops, August 25, 1950.

He entered military service January 4, 1951, was discharged therefrom on March 3, 1951, returned to his job of apprentice April 2, 1951, and he completed his apprenticeship June 16, 1955.

During 1951 and 1952 Harvey was used to fill machinists' vacation vacancies; in 1953 and 1954 he declined offers to be used to fill machinists' vacation vacancies. However, in 1955 he again agreed to be used to fill vacation vacancies and did so.

When Harvey completed his apprenticeship he applied for employment as a machinist. Copy of application is submitted herewith and identified as Exhibit A.

On August 15, 1955, seven apprentices who had completed apprenticeships, some before and some after Harvey, were employed and given seniority as machinists.

This situation, in my opinion, might make working hazardous either for him or for others, and needs to be evaluated realistically.

His nervous disorder, while considered to be temporary in nature, may require that he remain away from the job in the interest of safety until he has a firmer grip upon himself. Perhaps if he were given an additional month's leave of absence and then were re-evaluated by your personnel department, his continued ability to fit into your organization could be more realistically judged.

If I can be of any further service please do not hesitate to call."

Notwithstanding the advice of Dr. Ehrman, in an effort to help the boy all it could to recuperate, the carrier permitted Harvey to remain in service. On September 23, 1954, Dr. Ehrman addressed the following:

**"TO WHOM IT MAY CONCERN:**

Mr. James Otis Harvey of RFD No. 1 Crestwood, Kentucky, suffered a severe emotional disorder and came under my professional care in 1953.

He was hospitalized on the psychiatric section at the Kentucky Baptist Hospital, Louisville, Kentucky from June 21, 1953 through July 17, 1953.

Diagnostic impression at that time was that of a Schizophrenic Reaction."

Upon completion of his apprenticeship—as a final effort to help him—Harvey on June 17, 1955 was assigned to fill vacation vacancies in our diesel shop at South Louisville, Kentucky. He resigned July 22, 1955.

We are submitting copy of Mr. Harvey's application for apprenticeship. It will be noted there is no requirement thereon that he will be hired as machinist upon completion of his apprenticeship.

The hiring of an employe is exclusively a managerial prerogative and since there is no agreement rule requiring the hiring of Harvey (or any other individual), in the circumstances, there is no merit to the employes' claim and it should, therefore, be denied.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The entire claim of the claimant, J. O. Harvey, is predicated upon the Memoranda Agreement effective April 30, 1940 covering

**SENIORITY AS MECHANICS OF APPRENTICES WHO ENTERED  
ARMED FORCES OR MERCHANT MARINE SERVICE  
AND WHO MAY SUBSEQUENTLY RETURN TO SERVICE AND  
COMPLETE APPRENTICESHIP AFTER DISCHARGE FROM  
MILITARY SERVICE OR MERCHANT MARINE SERVICE**

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which reads as follows:

"An apprentice who entered the services of the armed forces of the United States, or Merchant Marine Service, subsequent to April 30, 1940, is honorably discharged, re-entered the service in accordance with law and rules of the existing agreements and completes his apprenticeship, and provided that he would have been retained in the service upon the date on which he would have originally completed his apprenticeship, will be given seniority standing as mechanic from date he would have originally completed his apprenticeship had he remained in the service of the Railroad Company, computed on basis of 290 days per year or 24-1/6 days per month."

That Agreement primarily upped the seniority date of an apprentice who entered Military Service after April 30, 1940 to the date he would have originally completed his apprenticeship if he had not been in Military Service, but had remained in the service of the Carrier "provided he would have been retained in the service (of the Carrier) upon the date on which he would have originally completed his apprenticeship," (words in brackets added). The claimant if he had not been in Military Service could have completed his apprenticeship on April 19, 1955.

On April 19, 1955, the claimant could not have been retained as a permanent machinist employe as from February 21, 1955 to August 15, 1955 there were furloughed machinists available with seniority rights who would have been entitled to recall first. The said Memoranda Agreement effective April 30, 1940 is therefore not applicable.

The fact that the claimant completed his apprenticeship as such and did work as a machinist on vacation vacancies up to July 22, 1955 did not give him any seniority rights or place him in the status of a permanent employe.

**AWARD**

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION**

**ATTEST: Harry J. Sassaman**  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1958.